

9 FAM 41.102

PERSONAL APPEARANCE OF APPLICANT

(CT:VISA-977; 06-25-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.102 RELATED STATUTORY PROVISIONS

(CT:VISA-977; 06-25-2008)

See INA 222(h), (8 U.S.C. 1202(h))

INA 222(h)

h. Notwithstanding any other provision of this Act, the Secretary of State shall require every alien applying for a nonimmigrant visa--

(1) Who is at least 14 years of age and not more than 79 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived--

(A) By a consular official and such alien is--

- (i) Within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 101(a)(15) ;*
- (ii) Within the NATO visa category;*
- (iii) Within that class of nonimmigrants enumerated in section 101(a)(15)(C)(iii) (referred to as the 'C-3 visa' category); or*
- (iv) Granted a diplomatic or official visa on a diplomatic or official passport or on the equivalent thereof;*

(B) By a consular official and such alien is applying for a visa--

- (i) Not more than 12 months after the date on which such alien's prior visa expired;*
- (ii) For the visa classification for which such prior visa was issued;*
- (iii) From the consular post located in the country of such alien's usual residence, unless otherwise prescribed in regulations that require an applicant to apply for a visa in*

- the country of which such applicant is a national; and
- (iv) The consular officer has no indication that such alien has not complied with the immigration laws and regulations of the United States; or
- (C) By the Secretary of State if the Secretary determines that such waiver is--
- (i) In the national interest of the United States; or
- (ii) Necessary as a result of unusual or emergent circumstances; and
- (2) Notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien--
- (A) is not a national or resident of the country in which such alien is applying for a visa;
- (B) was previously refused a visa, unless such refusal was overcome or a waiver of ineligibility has been obtained;
- (C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);
- (D) is a national of a country officially designated by the Secretary of State as a state sponsor of terrorism, except such nationals who possess nationalities of countries that are not designated as state sponsors of terrorism;
- (E) Requires a security advisory opinion or other Department of State clearance, unless such alien is--
- (i) Within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 101(a)(15);
- (ii) Within the NATO visa category;
- (iii) Within that class of nonimmigrants enumerated in section 101(a)(15)(C)(iii) (referred to as the 'C-3 visa' category); or
- (iv) An alien who qualifies for a diplomatic or official visa, or its equivalent; or
- (F) Is identified as a member of a group or sector that the Secretary of State determines--
- (i) Poses a substantial risk of submitting inaccurate information in order to obtain a visa;

- (ii) *Has historically had visa applications denied at a rate that is higher than the average rate of such denials; or*
- (iii) *Poses a security threat to the United States.*

9 FAM 41.102 RELATED REGULATORY PROVISIONS

(CT:VISA-973; 06-12-2008)

See 22 CFR 41.102

41.102 Personal appearance of applicant.

- (a) Personal appearance before a consular officer is required except as otherwise provided in this section. Except when the requirement of personal appearance has been waived pursuant to paragraph (b) or (c) of this section, each applicant for a nonimmigrant visa must personally appear before and be interviewed by a consular officer, who shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:
 - (1) The proper nonimmigrant classification, if any, of the alien; and
 - (2) The alien's eligibility to receive a visa.
- (b) Waivers of personal appearance by consular officers. Except as provided in paragraph (d) of this section or as otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:
 - (1) Is a child under 14 years of age;
 - (2) Is a person over 79 years of age;
 - (3) Is within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, C-2, C-3 (except attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 and who is seeking a visa in such classification;
 - (4) Is an applicant for a diplomatic or official visa as described in §§41.26 or 41.27 of this chapter, respectively;

- (5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant biometric visa in the same classification at the consular post of the applicant's usual residence, and for whom the consular officer has no indication of visa ineligibility or of noncompliance with U.S. immigration laws and regulations; or
 - (6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances.
- (c) Waivers of personal appearance by the Deputy Assistant Secretary of State. Except as provided in paragraph (d) of this section, the Deputy Assistant Secretary for Visa Services may waive the personal appearance before a consular officer of an individual applicant or a class of applicants if the Deputy Assistant Secretary finds that the waiver of personal appearance is warranted in the national interest or because of unusual circumstances and that national security concerns do not require an interview.
- (d) Cases in which personal appearance may not be waived. A consular officer or the Deputy Assistant Secretary of State may not waive personal appearance for:
- (1) Any NIV applicant who is not a national or resident of the country in which he or she is applying, unless the applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.
 - (2) Any NIV applicant who was previously refused a visa, is listed in CLASS, or who otherwise requires a Security Advisory Opinion, unless:
 - (i) The visa was refused temporarily and the refusal was subsequently overcome;
 - (ii) The alien was found inadmissible, but the inadmissibility was waived; or
 - (iii) The applicant is eligible for a waiver of the interview under paragraphs (b)(3) or (b)(4) of this section.
 - (3) Any NIV applicant who is from a country designated by the Secretary of State as a state sponsor of terrorism, regardless of age, or in a group designated by the Secretary of State under section 222(h)(2)(F) of the Immigration and Nationality Act, unless the applicant is eligible for a waiver under paragraphs (b)(3) or (b)(4) of this section.

(e) Unusual circumstances. As used in this section, unusual circumstances shall include, but not be limited to, an emergency or unusual hardship.

[68 FR 40128, July 7, 2003, as amended at 71 FR 75663, Dec. 18, 2006]